

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94707]

### Order Granting Application by The Nasdaq Stock Market LLC and Five Affiliated National Securities Exchanges for Exemption, Pursuant to Section 36(a) of the Exchange Act, From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

April 12, 2022.

The Nasdaq Stock Market LLC (“Nasdaq”) and its affiliated national securities exchanges Nasdaq PHLX LLC (“Phlx”), Nasdaq BX, Inc. (“BX”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), and Nasdaq MRX, LLC (“MRX”) (each a “Nasdaq Exchange” and collectively the “Nasdaq Exchanges”) have filed with the Securities and Exchange Commission (the “Commission” or “SEC”) an application<sup>1</sup> for exemption under Section 36(a) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 0–12 thereunder<sup>3</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>4</sup> with respect to the rules of the Nasdaq Exchanges relating to arbitration. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

The Nasdaq Exchanges have requested that the Commission: (i) Grant Nasdaq an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to rules on arbitration in the “General 6” section of Nasdaq’s rulebook (the “General 6 Rules”) effected solely by virtue of changes to rules on arbitration in the Rule 12000 Series and Rule 13000 Series of the Financial Industry Regulatory Authority, Inc. (“FINRA”) Manual (Code of Arbitration Procedures for Customer Disputes and Code of

Arbitration Procedures for Industry Disputes) (“FINRA Arbitration Rules”) that are incorporated by reference into the General 6 Rules; and (ii) grant the remaining Nasdaq Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to their rules on arbitration that are effected solely by virtue of a change to the General 6 Rules that are incorporated into the remaining Nasdaq Exchanges’ rules by reference. Specifically, the Nasdaq Exchanges request that they be permitted to incorporate by reference changes made to the FINRA Arbitration Rules and Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the Nasdaq Exchanges’ rules without the need for each Nasdaq Exchange to separately file, pursuant to Section 19(b) of the Exchange Act, a proposed rule change similar to the one filed by FINRA or Nasdaq (as applicable). The Nasdaq Exchanges believe that these exemptions are appropriate because they will promote consistency among the Nasdaq Exchanges’ rules pertaining to arbitration, which are not trading rules.<sup>5</sup>

As a condition of the requested exemption, the Nasdaq Exchanges have agreed to provide written notice to their members whenever a change is proposed to FINRA Arbitration Rules or Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the rules of the Nasdaq Exchanges.<sup>6</sup> Such notice will alert the Nasdaq Exchanges’ members to the proposed FINRA or Nasdaq rule change and give them an opportunity to comment on the proposal.<sup>7</sup> The Nasdaq Exchanges will similarly inform members in writing when the Commission approves any such proposed changes.<sup>8</sup>

The Commission has issued exemptions similar to the Nasdaq

<sup>5</sup> Exemptive Request, *supra* note 1, at 2–3. An SRO wishing to incorporate rules of another SRO by reference may submit a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, if, among other things, the rules to be incorporated are categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration). See Exchange Act Release No. 49260 (Feb. 17, 2004), 69 FR 8500 (Feb. 24, 2004).

<sup>6</sup> The Nasdaq Exchanges will provide such notice via a posting on the same website location where they post their own rule filings pursuant to and within the timeframe required by Rule 19b–4(1) under the Exchange Act. The website posting will include a link to the location on Nasdaq’s website where the applicable proposed rule change is posted. Exemptive Request, *supra* note 1, at 3 & n.7.

<sup>7</sup> Exemptive Request, *supra* note 1, at 3.

<sup>8</sup> *Id.*

Exchanges’ request.<sup>9</sup> In granting one such exemption in 2010, the Commission repeated an earlier Commission statement that it would consider similar future exemption requests from other self-regulatory organizations (“SROs”), provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission’s release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.<sup>10</sup>

The Commission believes that the Nasdaq Exchanges have satisfied each of these conditions. The Commission also believes that granting the Nasdaq Exchanges an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.<sup>11</sup> The Commission therefore finds it appropriate in the public interest, and consistent with the protection of investors, to exempt the Nasdaq

<sup>9</sup> See, e.g., Release No. 34–83040 (Apr. 12, 2018), 83 FR 17198 (Apr. 18, 2018) (order granting MIAX PEARL, LLC, an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Miami International Securities Exchange, LLC); Release No. 34–61534 (Feb. 18, 2010), 75 FR 8760 (Feb. 25, 2010) (order granting BATS Exchange, Inc., an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Chicago Board Options Exchange, Incorporated, Financial Industry Regulatory Authority, Inc., and the New York Stock Exchange, LLC) (“BATS Order”).

<sup>10</sup> See Release No. 34–83040, *supra* note 17, at 75 FR 17199 (footnotes omitted).

<sup>11</sup> *Id.* at 75 FR 17199 & n.15.

<sup>1</sup> See Letter from Stephen Matthews, Principal Associate General Counsel, Nasdaq, to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated February 12, 2021 (“Exemptive Request”).

<sup>2</sup> 15 U.S.C. 78mm.

<sup>3</sup> 17 CFR 240.0–12 (Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act).

<sup>4</sup> 15 U.S.C. 78s(b).

Exchanges from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules they have incorporated by reference.

Accordingly, it is ordered, pursuant to Section 36 of the Exchange Act,<sup>12</sup> that the Nasdaq Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act with respect to changes to their rules on arbitration resulting solely from changes made to the FINRA Arbitration Rules or the Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the Nasdaq Exchanges' rules without the need for each Nasdaq Exchange to separately file, pursuant to Section 19(b) of the Exchange Act, a proposed rule change similar to the one filed by FINRA or Nasdaq, provided that the Nasdaq Exchanges promptly provide written notice to their members whenever a change is proposed to the FINRA Arbitration Rules or the Nasdaq General 6 Rules, and provided that they inform their members in writing when the Commission approves any such proposed change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94701; File No. SR-CboeEDGA-2022-008]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.16

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 11, 2022, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial"

proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") is filing with the Securities and Exchange Commission (the "Commission") a proposal to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers, currently codified in Rule 11.16(a)-(d), (f) and (g). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is available on the Exchange's website ([https://markets.cboe.com/us/equities/regulation/rule\\_filings/edga/](https://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Exchange Rule 11.16 to make permanent the Market-Wide Circuit Breaker ("MWCB") pilot program. The proposal is substantively identical to New York Stock Exchange LLC ("NYSE") Rule 7.12 and NYSE American LLC ("NYSE American") Rule 7.12E.

###### The Pilot Rules

The MWCB rules, including the Exchange's Rule 11.16(a)-(d), (f) and (g), provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash

equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the "Pilot Rules," *i.e.*, Rule 11.16(a)-(d), (f) and (g)).<sup>5</sup> The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index ("SPX").<sup>6</sup> Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "LULD Plan"),<sup>7</sup> including any extensions to the pilot period for the LULD Plan.<sup>8</sup> In April

<sup>5</sup> See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129) ("Pilot Rules Approval Order").

<sup>6</sup> The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.*, NYSE Arca Rule 6.65-O(d)(4).

<sup>7</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

<sup>8</sup> See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-EDGA-2011-31) (Approval Order); and 68806 (February 1, 2013), 78 FR 8670 (February 6, 2013) (SR-EDGA-2013-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Operative Date of Changes to the Rule

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<sup>12</sup> 15 U.S.C. 78mm.

<sup>13</sup> 17 CFR 200.30-3(a)(76).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).